IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

OP.No. 6913 of 2002(W)

PETITIONER:

S.GOPALAKRISHNAN NAIR (PCU 540),
S/O.SIVASANKARAN NAIR, AGED 50 YEARS,
AMBALAMEDU POLICE STATION, ERNAKULAM.

BY ADV. SRI.V.A.MUHAMMED,
SRI.K.E.HAMZA.

RESPONDENTS:
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1. **THE SECRETARY TO GOVERNMENT,**
   DEPARTMENT OF HOME, SECRETARIAT, TRIVANDRUM.

2. **THE DIRECTOR GENERAL OF POLICE,**
   POLICE HEAD QUARTERS, TRIVANDRUM.

BY GOVT. PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 12213/2002 IN O.P. NO. 6913/2002

DISMISSED

07/08/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT IN O.P. NO. 4174/2000-V OF THIS HONOURABLE COURT DTD. 24/03/2000.

EXT.P.2: COPY OF THE ORDER NO. G1/27586/97 OF THE R.2 DTD. 23/06/2000.

EXT.P.3: COPY OF THE REVISION PETITION FILED BEFORE THE R.1. DTD. 30/10/2000.

EXT.P.4: COPY OF THE G.O. (RT). NO. 3344/2001/HOME OF THE GOVERNMENT DTD. 26/09/2001.

EXT.P.5: COPY OF THE PETITION FILED BEFORE THE R.2. DTD. 21/06/2004.

EXT.P.6: COPY OF THE SHOW CAUSE NOTICE NO. G1/27586/97 OF THE DIRECTOR GENERAL OF POLICE DTD. 02/2000.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.6913 OF 2002

Dated this the 7th day of August, 2007

JUDGMENT

C.R.

Heard the learned counsel for the petitioner and learned Government Pleader.

2. The petitioner, while in service as a Police Constable, was proceeded against on counts of indiscipline. An enquiry was held. The Enquiry Officer reported that the petitioner was not guilty of the charges. The Disciplinary Authority, obviously, proposed to disagree with the findings of the Enquiry Officer. Though a show cause notice was issued to the petitioner by the Disciplinary Authority, that did not contain any specific grounds, on which, the Disciplinary Authority was proceeding or proposing to disagree with the findings of the Enquiry Officer. However, in a composite notice, the Disciplinary Authority stated that it is unable to agree with the findings of the Enquiry Officer, having regard to the entire materials on record and because the

petitioner was given ample opportunity to substantiate his case before the Enquiry Officer. It was further stated that disagreeing with the findings of the Enquiry Officer, there was a proposal to impose the punishment of removal from service.

3. From one angle, it could be said that if all the grounds and reasons for disagreeing with the findings of the Enquiry Officer are to be stated in the show cause notice issued by the Disciplinary Authority, that Authority could be accused of having prejudged the issue. But though not to be termed as prejudging the entire issue, judging an issue to conclude as to whether it is necessary to disagree with the findings of the Enquiry Officer is a necessary ingredient and a jurisdictional fact to trigger the issuance of a show cause notice disagreeing with the findings of an Enquiry Officer. Therefore, while the Disciplinary Authority issues a notice to show cause against a proposal to disagree with the findings of the Enquiry Officer, the Disciplinary Authority cannot be accused of having prejudged the issue, merely because the reasons for the proposal to

disagree is made known to the parties. If the grounds of the proposal to disagree with the findings of the Enquiry Officer are not made known to the delinquent, the show cause notice cannot be treated as a notice with any ground for the proposed action. When the enquiry report is in favour of the delinquent and the superior authority proposes to disagree with it, it is appropriate, in the fitness of things, that the reasons forming the foundation of the decision to issue a show cause notice calling upon the delinquent to show cause to a proposal to disagree with the findings of the Enquiry Officer are notified to the delinquent. The same is a principle of natural justice which is embedded in the rule of fair hearing, because, if the delinquent is called upon to show cause against a decision in his favour in the realm of service, it is necessary that he be told the grounds on which an action is proposed against him, overruling the findings of the Enquiry Officer. So much so, a notice to show cause against a proposal to disagree with the findings of the Enquiry Officer has to contain the reasons for the proposal. I may hasten to add that it is not the requirement that all the reasons, even if they are

either minute or remote, have also to be stated. It may not also be necessary to explicitly state all that passes through the mind of the Disciplinary Authority, while it is necessary to clearly indicate to the delinquent the specific ground on which the Disciplinary Authority proposes to disagree with the findings of the Enquiry Officer.

4. In the case in hand, after the receipt of the Disciplinary Authority's show cause notice, the petitioner repeated all his contentions as were placed before the Enquiry Officer. Even assuming that with such an opportunity and also with further opportunity of personal hearing, the petitioner had exhausted himself of all his contentions as to any reason on which the Disciplinary Authority ought not to disagree with the findings of the Enquiry Officer, it is absolutely necessary that the final decision of the Disciplinary Authority, disagreeing with the findings of the Enquiry Officer reflects the reasons for such disagreement. The impugned order, by which the Disciplinary Authority disagreed with the findings of the Enquiry Officer, is

the mere repetition that the entire materials have been looked into and the materials on record show that the petitioner was guilty. No specific reasons have been stated in the impugned order of the Disciplinary Authority pointing out the materials in the enquiry, on the basis of which, the findings of the Enquiry Officer is being reversed or disagreed to. The views of the Disciplinary Authority in such a proceedings, on the basis of the materials on record, is something that should reflect in the ultimate decision. That speaking order should contain the specific reasons with reference to the materials which form the foundation of the decision of the Disciplinary Authority to disagree with the findings of the Enquiry Officer and enter a finding against the interest of the delinquent.

5. The impugned order of the Disciplinary Authority ultimately ends by saying that a lenient view is being taken whereby the proposed removal from service is being reduced to barring of two increments with cumulative effect. This is wholly insufficient. Mere reduction of the proposed punishment by

itself is no ground to sustain the disagreement of the Disciplinary Authority with the findings of the Enquiry Officer, without notifying to the delinquent any reason and without stating any reason in the final order.

6. For the aforesaid reasons, the impugned decision of the Disciplinary Authority, Ext.P2 and the appellate order of the Government, Ext.P4 are quashed. While this judgment does not amount to a stamp of approval being given to Ext.P5 show cause notice, the same is not being quashed. This is to aid the Disciplinary Authority to issue a further show cause notice stating specific reasons, if any, for the proposal to disagree with the findings of the Enquiry Officer. If the Disciplinary Authority choses to do so, that shall be done within an outer limit of 45 days from the date of receipt of a copy of this judgment. Otherwise, it shall be deemed that the Disciplinary Authority does not propose to disagree with the findings of the Enquiry Officer.

7. Having regard to the fact that the petitioner has already retired from service, even if the Disciplinary Authority proceeds to act by initiating further steps to disagree with the findings of the Enquiry Officer, the disciplinary proceedings shall be finalised within a further period of four months.

The writ petition is allowed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.6913 OF 2002

JUDGMENT

7th AUGUST, 2007.

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